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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/853,428

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George Brainard

BRA01-NP002

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EXAMINER

GIBSON, ROY DEAN

ART UNIT

PAPER NUMBER

3739

MAIL DATE

DELIVERY MODE

04/30/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/853,428	<b>Applicant(s)</b> BRAINARD, GEORGE	
	<b>Examiner</b> Roy D. Gibson	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2, 12, 14 and 28-56 is/are pending in the application.
- 4a) Of the above claim(s) 28-30, 33 and 47-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 12, 14, 31, 32 and 34-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/4/2009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

***Entry of Amendment***

Applicant's amendment filed on February 4, 2009 is acknowledged. Claims 3-11, 13 and 15-27 have been canceled by the applicant, and claims 28-30, 33 and 47-56 have been withdrawn, thus claims 2, 12, 14, 31, 32 and 34-46 are currently examined.

***Prior Rejections or Objections***

The following comments pertain to the rejections or objections in the most recent Office action mailed on April 18, 2007. Rejections under 35 U.S.C. 102 are maintained as presented below.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 12, 14, 31, 32 and 34-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Searfoss et al. (5,265,598). Searfoss et al. disclose a method of at least treating or preventing at least one light responsive disorder (SAD) in at least one mammal, said method comprising the steps of:

utilizing at least one light source, said at least one light source (16) emitting optical radiation;

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causing said optical radiation to be therapeutically effective light in an effective amount, said therapeutically effective by employing a pre-established spectral composition comprising at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm (blue light filter on wheel of eight narrow band pass filters each with 10-20 nm width and a "peak" in the either the violet (400-450 nm) or blue range (450-510 nm which each overlaps the claimed range of 435-488 nm while the violet or blue filter transmits the therapeutically effective light in an effective amount);

exposing at least a portion of the retina of at least one eye of at least one mammal to said pre-established spectral composition of optical radiation such that said light source is not mounted on the body of said at least one mammal;

stimulating the photoreceptor system for at least one of the circadian, photoneural, neuroendocrine or neurobehavioral systems of said at least one mammal; and, enabling at least the treatment or the prevention of at least one light responsive disorder in said at least one mammal (col. 1, lines 14-52, col. 5, line 61-col. 6, line 20 and lines 36-49).

Note that Searfoss et al. disclose in Figure 2, a wheel of eight filters that span the visible spectrum (400 -700 nm) evenly spaced throughout the spectrum, therefore, the examiner concludes that a filter for at least violet, blue, green, yellow, orange and red are included (see col. 5, lines 61-67). These filters would provide a "pre-established spectral composition as claimed by amended claim 31.

Note that none of the claims disclose an intensity distribution, width-at-half-maximum, or and intensity level that is a threshold for “therapeutically effective”.

Further to claim 35-38 a typical blue or any color filter is inherently made of a transparent substrate with various coating which are selected to provide a transmission of selected wavelengths of, in this case, 10-20 nm wide and peaking in the blue. Note that the light filtering component would be transparent or translucent depending upon the thickness of the coating material(s). (See Sakamoto et al., patent no. 5,648,653 for details).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gott (5,274,403) discloses a violet through blue lens for treating inhibiting the production of melatonin.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory

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period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy D. Gibson/  
Primary Examiner  
Art Unit 3739

April 27, 2009